

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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LITIGATION

This Document Relates To:

All Actions

No. 0:18-cv-01776-JRT-HB

**JOINT STATUS REPORT FOR
THE APRIL 11, 2019 STATUS
CONFERENCE**

Pursuant to the Court's Order set out in its Minutes dated January 28, 2019 (Dkt. 264), the parties in these cases submit this joint status report regarding the April 11, 2019 status conference.

GENERAL STATUS

Since the last status conference before the Court, the parties have been complying with the Court's orders. The relevant parties have completed and served their ESI Disclosures and Defendants have served their initial responses and objections to the agreed-upon subset of Plaintiffs' document requests. The parties expect to begin the meet and confer process shortly regarding Defendants' custodians and responses and objections after Plaintiffs complete their review.

Plaintiffs' Further Statement

Plaintiffs anticipate that this process can be completed within 60 days and any disputes can be presented to the Court thereafter. Plaintiffs request that the Court set a deadline for each Defendant to propose an initial set of document custodians, then a subsequent deadline for Plaintiffs to make any counter-proposals. A final deadline should then be set for resolving issues regarding document custodians and raising any disputes with the Court in a timely manner.

Plaintiffs also note a concern regarding the preservation of phone records in the possession of phone carriers of Defendants' potential custodians. While a handful of the senior most executives phone devices were addressed last fall, there are likely to be numerous other document custodians' whose phone records will be relevant. At present, only one Defendant has produced relevant phone numbers (cell, office, etc.) for their

relevant employees. Plaintiffs need to ensure that phone records of potential document custodians are being preserved given the rolling destruction of phone records by phone carriers. Plaintiffs have learned in prior cases the best way to avoid destruction of phone record evidence is for the parties to disclose relevant phone numbers for potential document custodians, then ensure the relevant phone carrier is contacted for each such phone number.

Plaintiffs believe that the April 11, 2019 conference should be conducted in person but a telephone conference line be made available for attorneys who wish to appear telephonically. If it would assist the Court, Plaintiffs are able to provide a dial in number for such a call.

Defendants' Further Statement

Consistent with the Court's Orders, Defendants are prepared to discuss their written responses and objections to the agreed sub-set of document requests and to propose document custodians. The parties have not yet met and conferred regarding these issues. Until such time as Plaintiffs articulate their concerns, if any, with Defendants' responses, however, they cannot pre-judge the amount of time it will take to resolve those concerns/negotiate them to impasse.¹

Defendants do not agree, however, that bringing any unresolved disputes regarding document requests or custodians that may remain after the parties meet and confer to the

¹ The first time Plaintiffs raised their proposal of 60 days to resolve disputes over their requests for production and for the Court to set deadlines for identifying document custodians was today. As such, the Defendants have not had any opportunity to meaningfully consider Plaintiffs' proposal, nor have the parties had any opportunity to meet and confer. Defendants believe it would be a more efficient use of the parties' and the Court's resources to confer on these issues first before raising them with the Court.

Court's attention prior to the resolution of the motion to dismiss is appropriate or practicable under the circumstances. As the Court recognized in its Order (Dkt. 289), so as to "conserve[] resources and moderat[e] unfairness or prejudice," there should be "additional negotiations to refine the agreements and the parties' disclosures after the motions are resolved"—the Court specifically required negotiations, not motion practice. *See also* Dkt. 264 ("After Defendants serve the written objections and responses, the parties should meet and confer further.").

With respect to Plaintiffs' request for phone numbers, the Court has already ruled on this issue and held that the Defendants do not need to provide an expansive list of phone numbers to Plaintiffs. Specifically, during the Motion to Stay briefing, Plaintiffs attached to their Opposition their proposed "Disclosures of Information," where Plaintiffs sought "phone directories" including the "office, fax, and cellular number" of those individuals identified in Defendants' disclosures. (*See* Dkt. 205, at Ex. E, p. 7). In its Order, the Court revised Plaintiffs' proposed "Disclosures of Information" and *removed* the paragraph that called for this information. There is no basis to revisit this ruling. Moreover, Defendants have assured Plaintiffs and the Court, repeatedly, that they are complying with their document preservation obligations under the Federal Rules, including document preservation obligations as to phone records.

Given that the parties are cooperatively moving forward with the tasks laid out by the Court at the last status conference, Defendants suggested to Plaintiffs that the April 11, 2019 conference be conducted telephonically so as to save out-of-state counsel the cost and inconvenience of attending the conference in person. Plaintiffs instead insisted that the

conference be conducted in person, but said that they would not oppose a request for a telephone line to be made available. Defendants believe that an in-person conference is unnecessary and ask that the Court conduct the conference telephonically for all counsel so as not to prejudice out-of-state counsel.

* * * * *

In light of the foregoing, the parties do not anticipate making any further filings on Monday, April 4, 2019. *See* Dkt. 264 at 3 (requiring the parties to submit position statements regarding any disputes to be resolved at the status conference).

Dated: April 4, 2019

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